

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDITH REYES and NATIONAL ARCHIVES RECORDS
ADMINISTRATION, FEDERAL RECORDS ADMINISTRATION,
Bayonne, N.J.

*Docket No. 97-223; Submitted on the Record;
Issued October 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

In the present case, appellant, an archives technician, filed a claim alleging that on or about June 4, 1993 she sustained injury to her shoulders and back resulting from heavy lifting over the course of several days. Appellant stopped work on June 8, 1993. The Office accepted appellant's claim for lumbar sprain. The Office terminated appellant's compensation benefits by decision dated August 7, 1996 on the grounds that the weight of the medical evidence of record established that appellant had no residuals or disability due to the work injury of June 4, 1993.

The Board has duly reviewed the case record and finds that the Office did meet its burden of proof in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹

In a report dated January 30, 1995, appellant's treating physician, Dr. A. Taubman, a Board-certified orthopedic surgeon, reported that based upon magnetic resonance imaging (MRI) study and computerized tomography (CT) scan, appellant had a herniated disc at C5-6, bulging disc at C6-7, cervical sprain and lumbar strain. Dr. Taubman further opined that all of these diagnosed conditions were related to appellant's accepted employment injury.

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

The Office thereafter referred appellant to Dr. Mark Hutter, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Hutter opined in a report dated June 26, 1995 that appellant was not capable of performing manual labor due to her continued complaints of neck and back pain. Dr. Hutter indicated that he was concerned by the presence of symptom magnification as her movements were slow, stiff, exaggerated, and her sensory abnormalities did not follow any specific dermatome pattern. He stated that while there was no specific traumatic injury, repetitive lifting could lead to a cervical lumbar strain; however, he would expect that such conditions would resolve within several weeks to a few months at most. He requested copies of the additional medical studies for further review. Dr. Hutter was thereafter provided copies of appellant's MRI and CT scans. In a report dated July 12, 1995, Dr. Hutter stated that the MRI of the lumbar spine dated September 17, 1993 showed no evidence of lumbar disc herniation; the MRI of the lumbar spine dated November 4, 1994 also was a normal study; and the MRI of the cervical spine dated November 11, 1994 showed disc herniation at C5-6 and bulging disc at C6-7. Dr. Hutter stated that the level of herniation at C5-6 did not correspond with appellant's clinical findings. In a supplemental report dated September 13, 1995, Dr. Hutter opined that he could not find any evidence of an anatomical disability, based upon his examination of appellant and a review of her diagnosis studies.

The Office thereafter determined that a conflict existed in the medical opinion evidence as to whether appellant had continuing disability and referred appellant to Dr. Paul A. O'Connor, Jr., a Board-certified orthopedic surgeon, for an impartial medical evaluation.

Section 8123 of the Federal Employees' Compensation Act provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."²

In a report dated March 5, 1996, Dr. O'Connor noted appellant's physical examination findings and recommended that appellant undergo MRI studies of the cervical and lumbar spines, as well as electromyography (EMG) studies of the upper and lower extremities so that he could properly evaluate appellant's condition. In a report dated March 25, 1996, Dr. O'Connor indicated that the requested MRI and EMG studies of appellant's cervical and lumbar spine and upper extremities had been performed. He stated that the lumbar MRI was completely normal, and that the negative MRI of the lumbar spine coincided with appellant's paucity of objective findings. Regarding the cervical studies, he noted that the cervical MRI revealed a small, subligamentous disc herniation at C5-6. He explained that the EMG studies showed no evidence of radiculopathy or peripheral neuropathy of the upper extremities. Dr. O'Connor then explained that it was apparent from the electromyographic studies that the small, subligamentous, disc herniation at C5-6 was not resulting in irritation of the cervical nerve root. Dr. O'Connor added that appellant's objective findings also indicated that there was no irritation of the cervical nerve root. Dr. O'Connor stated that a small subligamentous disc herniation did not preclude appellant's ability to perform her employment duties. Finally, Dr. O'Connor concluded that from an orthopedic standpoint appellant could return to full, gainful employment with no restrictions. The Office thereafter requested that Dr. O'Connor clarify whether

² 5 U.S.C. § 8123.

appellant's C5-6 disc condition was a residual of her employment injury. In a report dated May 15, 1996, Dr. O'Connor stated that appellant had never described "an event" in which she injured her cervical and lumbar spine. Rather, appellant had only stated that because of repetitive activity she developed pain in her cervical and lumbar spine. Dr. O'Connor concluded that in the absence of a traumatic episode or an acute onset of symptoms there was no causal relationship between appellant's cervical and lumbar spine pain beginning on July 4, 1993 and any work injury. In a report dated May 28, 1996, Dr. O'Connor noted appellant's history of injury as provided in the statement of accepted facts that on June 4, 1993 and for a three-month period prior, appellant was lifting heavy boxes as part of her duties; on June 4, 1993 she began experiencing pain in the shoulder and back; and that appellant's claim was accepted for lumbar sprain. He stated that this history corresponded with the history appellant provided at the time of her initial office visit on March 4, 1996. Dr. O'Connor stated that he did accept that appellant had been treated for a lumbar sprain. He concluded this report by noting "my opinion, in the letter to you, is that I do not feel there is a causal relationship between the herniated cervical disc and any injury sustained at work."

In the present case, the Office had accepted that appellant sustained lumbar sprain as a result of repetitive lifting in June 1993. Appellant was subsequently diagnosed with a herniated cervical disc, however, this condition was never accepted by the Office as causally related to the employment injury. Upon referral to Dr. O'Connor, the impartial medical specialist, the Office requested that Dr. O'Connor address whether the accepted lumbar strain had ceased and whether the cervical disc was causally related to the accepted employment injury. Based upon appellant's history of injury, his findings upon appellant's physical examination and findings from the MRI and EMG examinations, Dr. O'Connor concluded that appellant was no longer disabled due to residuals of the lumbar strain and appellant's herniated cervical disc condition was not causally related to her accepted employment injury.

While Dr. O'Connor's reports were not individually artfully written, read together they do establish that appellant's accepted lumbar sprain condition had ceased such that appellant was no longer disabled from employment. In his March 25, 1996 report, Dr. O'Connor explained that appellant's lumbar spine MRI studies were completely normal and that appellant had a paucity of objective findings upon examination of the lumbar spine. He thereafter concluded that orthopedically appellant no longer had any physical restrictions which would preclude her return to employment.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

Further, regarding the issue of whether appellant's diagnosed herniated cervical disc condition was causally related to her accepted employment injury, the Board notes that appellant's treating physicians have not offered any medical rationale to explain why the occupational injury appellant sustained in June 1993 would have caused this condition. Likewise, Dr. Hutter diagnosed the cervical disc condition but offered no medical rationale

³ *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

explaining the cause of the condition. Dr. O'Connor noted that appellant had no traumatic injury in June 1993 and no acute onset of symptoms in June 1993. Therefore, he stated that appellant had not sustained the herniated cervical disc condition as a result of her work activities in June 1993.

As Dr. O'Connor, the impartial medical specialist, properly explained his opinion that appellant was no longer disabled based upon the medical evidence of record, his report is entitled to great weight. The Office did meet its burden of proof to terminate appellant's compensation benefits based upon the report of Dr. O'Connor, the impartial medical specialist, in this case. The Office also properly determined that the medical evidence of record did not establish that appellant's herniated cervical disc condition was causally related to her accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated August 7, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 27, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member